

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i**

**Board of Land and Natural Resources
Department of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i**

FILE NO.: Cдуа OA-3289
REF: OCCL: MC
Acceptance Date: January 16, 2006
180 Exp. Date: July 16, 2006

April 13, 2006

REGARDING: Small Boat Pier Construction

APPLICANT: Jeffrey Isao Tsuzuki and Charlotte Chiemi Higa
44-237 Mikiola Drive, Kāne'ohe, HI 96744

AGENT: none

LANDOWNER: State of Hawai'i

LOCATION: Mikiola, Kāne'ohe, Ko'olaupoko, O'ahu

TMK: (1) 4-4-018:080

AREA OF USE: 260 square feet

SUBZONE: Resource (submerged)

DESCRIPTION OF AREA AND CURRENT USE:

The project site, TMK (1) 4-4-018:080, 44-237 Mikiola Drive is located in a residential neighborhood along the south lagoon of Kāne'ohe Bay on the island of O'ahu (**Exhibit 1**). The waters of Kāne'ohe Bay are located within the State Land Use Conservation District, Resource Subzone; the subject parcel itself is not.

The parcel was once two separate lots; these were consolidated in the 1950's and are identified on tax maps as lots 239 and 240 (**Exhibit 2**). In 2004 the property was converted into a two-unit Condominium Property Regime for the purposes of building a new dwelling on the site. The 14,653 square foot parcel currently contains a single-family residence, a tool shed, and a non-conforming seawall. An existing pier on CPR #1, the former lot 240, participated in the Kāne'ohe Bay Pier Amnesty Program and was issued a general lease on May 26, 2005 (Lease #S-5758).

The Board of Land and Natural Resources (BLNR) approved an after-the-fact seawall improvement to the seawall on December 10, 2004 [CDUP OA-3206]. A new dwelling and the proposed pier will be built on CPR #1, the former lot 239 (**Exhibit 3**).

The vast majority of neighboring parcels contain piers that are similar in size and construction to the proposed pier. An aerial photograph shows that there are approximately 18 piers for the 24 seaside lots on Mikiola Drive alone (**Exhibit 4**).

There are no significant habitat areas for aquatic flora or fauna in the vicinity of the project area. Soft corals, sponges, tunicates, anemones and the mamo, damsel, surgeon and blennies fish are the most common species of fish in the area. None of the organisms in Kāneʻohe Bay are considered rare or endangered.

PROPOSED USE:

The proposed pier will abut the existing seawall, and extend 35 feet into Kāneʻohe Bay. The pier will be supported by eight concrete pilings, each approximately 12" in diameter, which will rest approximately 24" below the sea floor. The use of pilings will allow for the free flow of water beneath the pier. The decking will be Ipe Hardwood. The height of the pier will be five feet above the sea floor at the seawall, and eight feet above the seafloor at the seaward end (**Exhibits 5-7**).

The total area of use is approximately 260 square feet within the Conservation District on State submerged lands. The proposed pier is similar in design, size, and construct to other piers in the neighborhood.

SUMMARY OF COMMENTS:

The application was referred to the following agencies for their review and comment: the State: Department of Land and Natural Resources (DLNR) - Oʻahu Board Member, Oʻahu District Land Office, Division of Aquatic Resources, and Division of Boating and Ocean Recreation; the Kāneʻohe Bay Task Force; the Office of Hawaiian Affairs; the Department of Business, Economic Development, and Tourism (DBEDT) – Office of Planning, Coastal Zone Management Program, and Land Use Commission; and the Department of Health Office of Environmental Quality Control.

Comments were received from the following agencies and are summarized as follows:

DLNR Land Division

No comments.

Office of Hawaiian Affairs

No comments.

DBEDT Office of Planning

The proposed pier is likely to require a Department of Army permit from the U.S. Army Corps of Engineers, and will therefore also require CZM federal consistency review and approval. DBEDT has not received a federal consistency application for the project.

CZM also questions the applicant's statement in the CDUA that a private pier would benefit the State's economy pursuant to Hawai'i Revised Statutes (HRS) Chapter 205A, *it is the policy of the CZM to provide public or private facilities and improvements important to the State's economy.*

Applicant's response:

- On February 28, 2006 the applicant mailed a completed application for a Department of Army permit to the U.S. Army of Engineer District of Honolulu, attention Mr. George Young. On the same day the applicant mailed an application for CZM Federal Consistency Review to DEBETD, attention Mary Lou Kobayashi. Applicant has supplied OCCL with copies of both applications.
- Applicant feels that the 55-year lease he will pay to the State for use of lands under the pier qualify it as a benefit to the State's economy.

ANALYSIS:

After reviewing the application, the Department has found that:

1. The proposed use is an identified use within the Conservation District according to Hawaii Administrative Rules (HAR), §13-5-25 *Identified land uses in the protective subzone, R-6 Marine Construction, (D-1)*. This use requires a BLNR Permit from the Department of Land and Natural Resources. The final decision as to whether to grant or deny the permit lies with the BLNR.
2. A public hearing pursuant to HAR §13-5-40 will not be required
3. Given that there are already over 200 piers currently lining the Bay, the Office of Conservation and Coastal Lands [OCCL] finds that the pier applicant proposes to build will result in minor alteration in the conditions of the land and water. This project is exempt from conducting an Environmental Assessment pursuant to HAR §11-200-8 *Exempt Classes of Action, 3: Construction and location of single, new, small facilities or structures.*
4. The proposed pier is makai of the certified shoreline and as such, is outside the Special Management Area.

SECTION 13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, Hawaii Administrative Rules (HAR).

1. *The proposed land use is consistent with the purpose of the Conservation District.*

The purpose of the Conservation district is to regulate land uses for the purpose of conserving, protecting, and preserving the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare. The purpose of this CDUA is to conform with the State's land use laws regarding replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced.

Piers have been established at Kāneʻohe Bay for over a hundred years. Staff believes that pier development is a good use of the natural resources of the Bay.

2. *The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.*

The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of the area. Kāneʻohe Bay has already been significantly altered with seawalls, channels, dredging, small inlets, piers, jetties, and boat harbors. Staff believes that pier development in this area is a good use of the natural resources of the Bay and does not appear to be inconsistent with the existing environment.

3. *The proposed land use complies with provisions and guidelines contained in Chapter 205, HRS, entitled "Coastal Zone Management," where applicable.*

Chapter 205A, HRS encompasses most land, water and marine areas of the State. Section 205A-2 (a) (5) (a) states that it is a policy of the Coastal Zone Management, to provide public or private facilities and improvements important to the State's economy in suitable locations. Kāneʻohe Bay is a suitable location for either public or private piers and other similar structures. Pier development in Kāneʻohe Bay does not affect beach processes or significantly affect public access.

4. *The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region.*

Kāneʻohe Bay is not actively sought out for beach recreation. Kāneʻohe Bay has already been significantly altered and there are approximately 200 piers and other

structures along the Bay. Therefore, the use is not inconsistent with the existing environment.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The existing pier and structures in Kāneʻohe Bay area a compatible use of the region and are an appropriate use of submerged land given the physical conditions and historic uses of the area.

6. *The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.*

The proposed pier will be one of many small piers in the area and Staff believes the effect of this proposed action will be minimal on the natural beauty and open space characteristics of the Bay.

7. *Subdivision of the land will not be utilized to increase the intensity of land uses in the Conservation District.*

No subdivision of land is proposed.

8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

It is staff's opinion that the proposed project will not be detrimental to the public health, safety and welfare.

DISCUSSION:

As stated previously, the Kāneʻohe Bay shoreline has been extensively altered. There are approximately 200 piers along the Bay. The proposed pier is similar in design, size, and construction with other piers in the neighborhood.

The Kāneʻohe Bay area is suited for boating and fishing as the bay bottom is silty and rocky and there is no sandy beach. Within the immediate area of the subject parcel, there is no public access to the shoreline except by boat. Recreational activities such as fishing, boating, and crabbing will not be affected by the proposed actions.

RECOMMENDATION:

Based on the preceding analysis, staff therefore recommends that the Board of Land and Natural Resources APPROVE this application for pier construction and associated improvements located at 44-237 Mikiola Drive, Kāneʻohe Bay, Koʻolaupoko District, on the island of Oʻahu, TMK (1) 4-4-018:080, subject to the following conditions:

- 1) The applicant shall comply with all applicable statutes ordinances, rules, and regulations of the Federal, State and County governments, and the applicable parts of Section 13-5-42, Hawai'i Administrative Rules;
- 2) The applicant, their successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, their successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall comply with all applicable Department of Health administrative rules;
- 4) All mitigation measures set forth in the application materials, and in the final environmental assessment for this project are hereby incorporated as conditions of the permit;
- 5) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
- 6) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
- 7) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 8) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
- 9) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the

immediate area, to the extent such practices are provided for by the Constitution of the State of Hawai'i, and by Hawai'i statutory and case law;

- 10) During construction, appropriate mitigation measures shall be implemented to minimize impacts to the marine environment, off-site roadways, utilities, and public facilities;
- 11) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- 12) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 13) The applicant shall obtain a land disposition from the O'ahu District Land Office for the use of State land;
- 14) The applicant shall provide documentation (e.g., book and page, or document number) that the permit approval has been placed in recordable form as a part of a deed instrument;
- 15) Other terms and conditions as may be prescribed by the Chairperson; and
- 16) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,



Michael Cain
Staff Planner

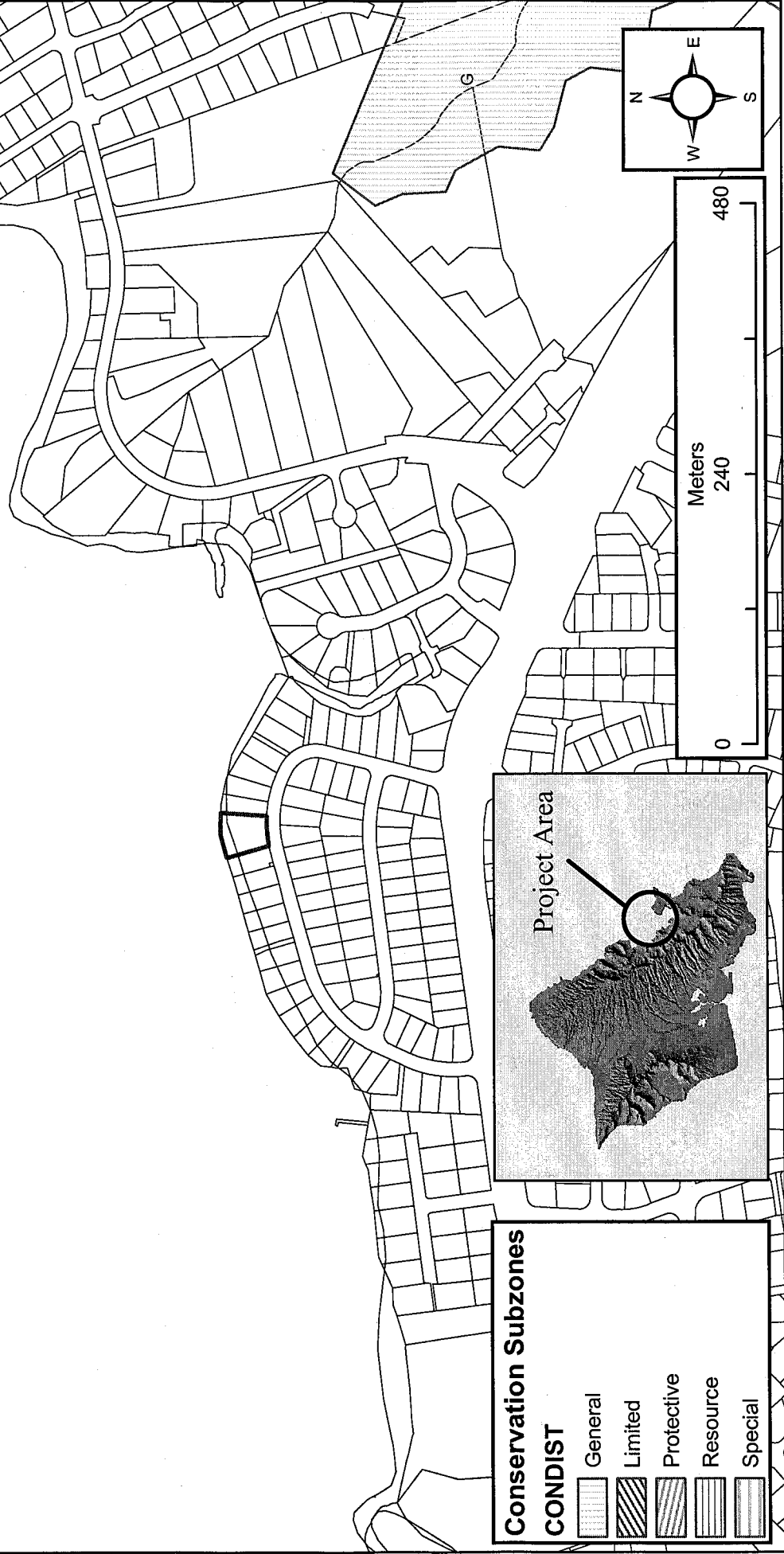
Approved for submittal



Peter T. Young, Chairperson
Board of Land and Natural Resources

EXHIBIT 1

Unofficial



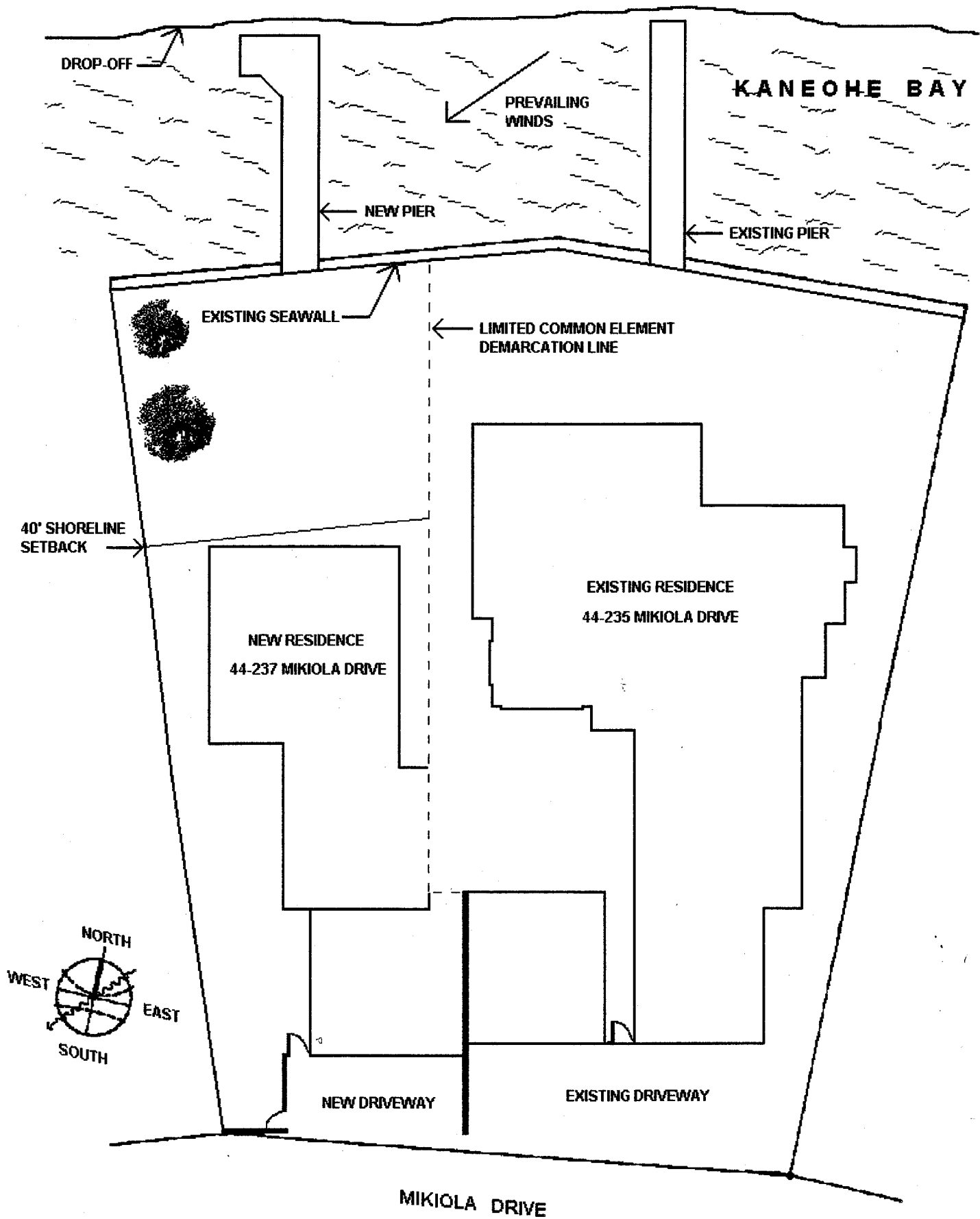
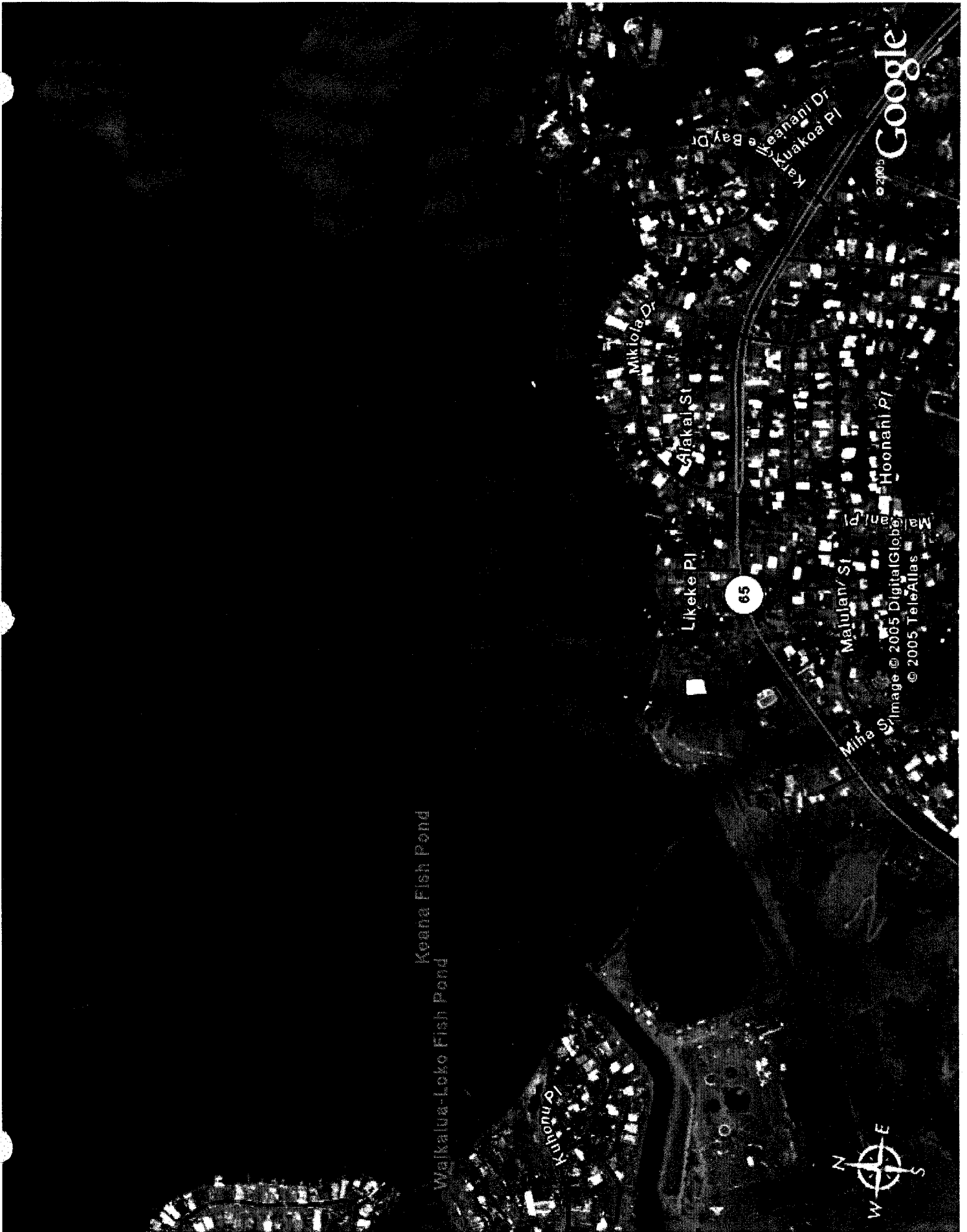


EXHIBIT 3

EXHIBIT F-2



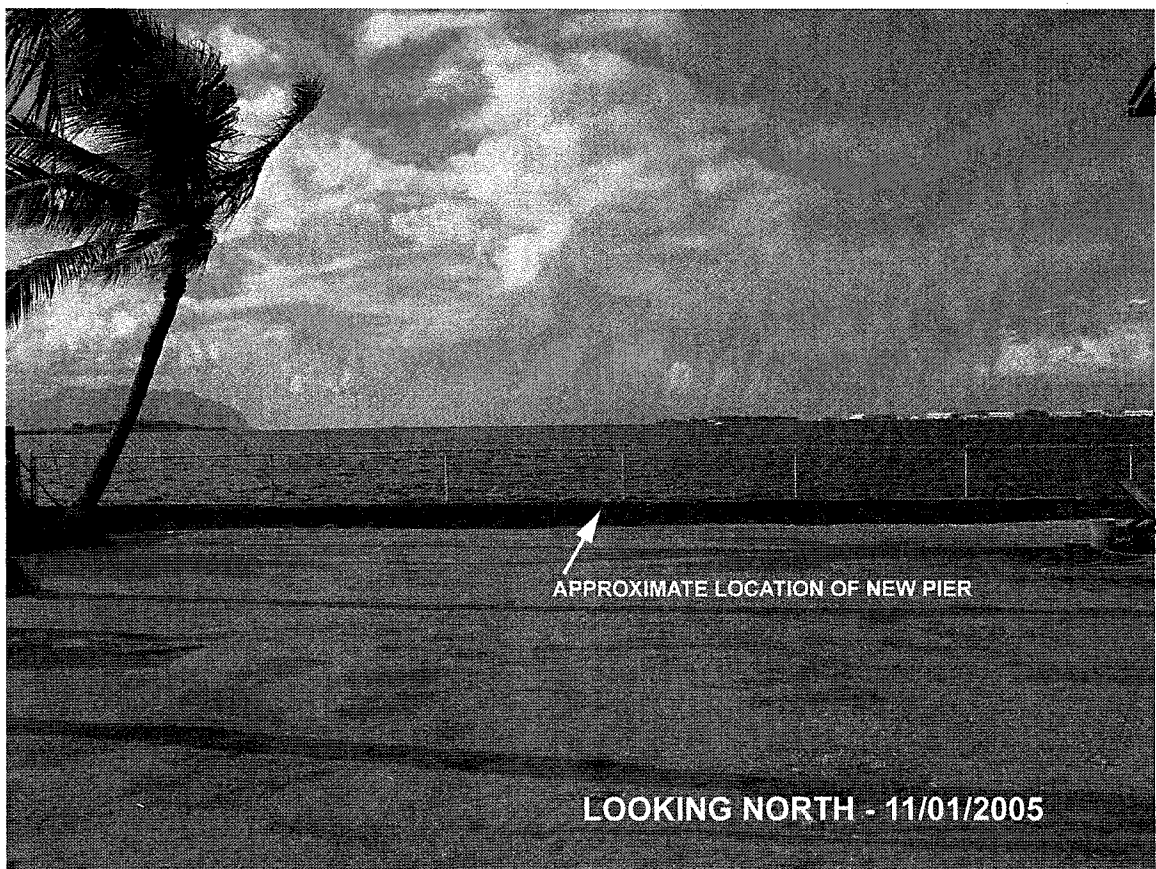


EXHIBIT 5

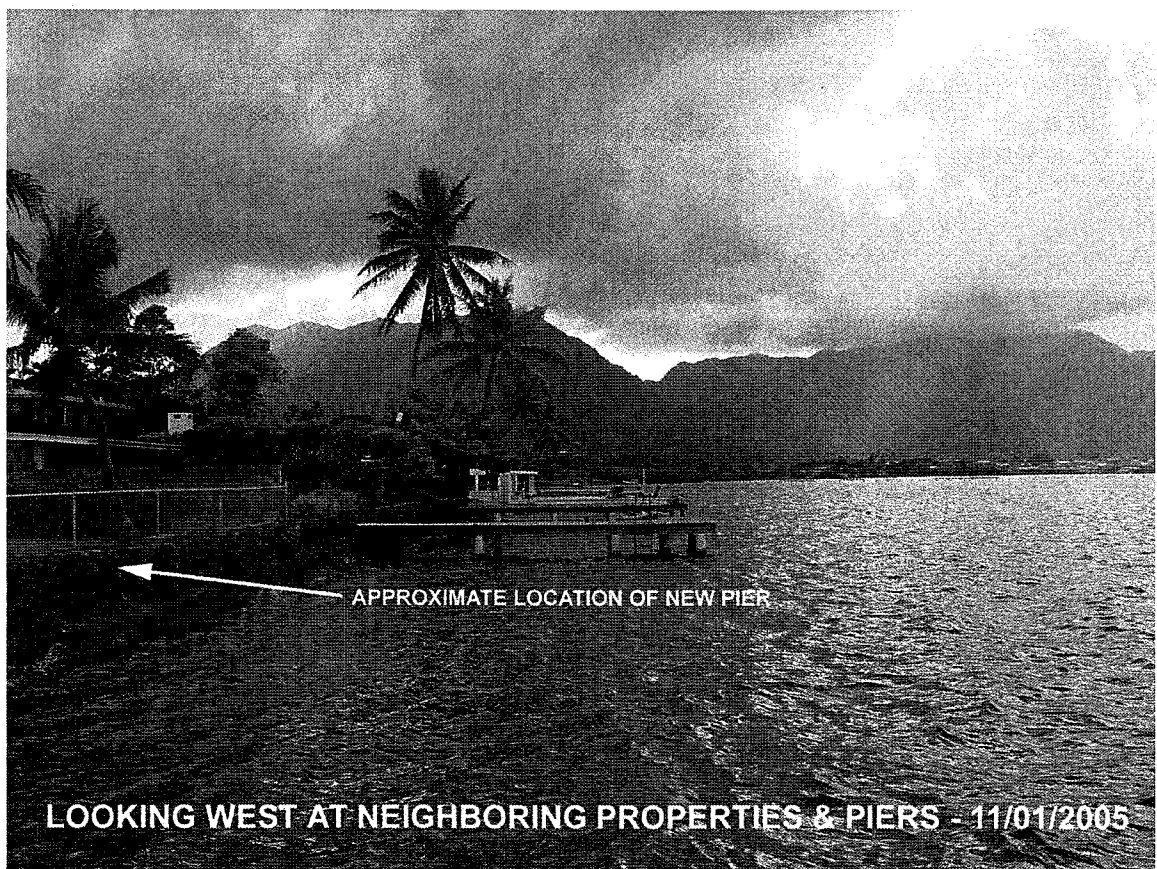
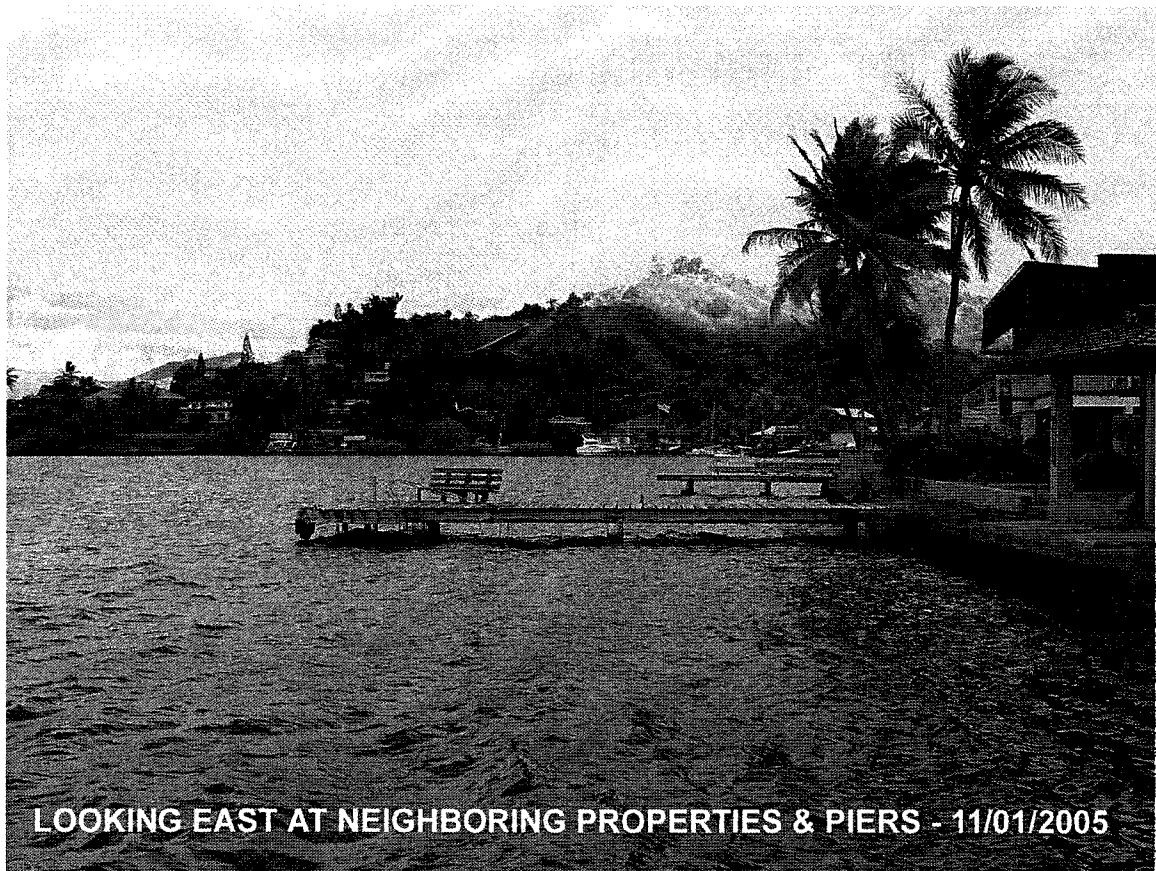


EXHIBIT 6

